

FILED ELECTRONICALLY

PATENT APPLICATION

Docket No: 17657.47a

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of		)	
		)	
	Nien-Hua Pai	)	
		)	
Serial No.:	10/761,574	)	Art Unit
		)	2625
Filed:	January 21, 2004	)	
		)	
For:	EXPOSURE CONTROL DEVICE	)	
		)	
Confirmation No.:	3462	)	
		)	
Customer No.:	022913	)	
		)	
Examiner:	Houshang Safaipoor	)	

REQUEST FOR REFUND UNDER 37 CFR 1.26(b)

Mail Stop 16  
Director of the U.S. Patent and Trademark Office  
PO Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

A response to the December 24, 2008 non-final office action was filed by the Applicant on March 24, 2009, with a Request for Continued Examination (RCE) and requisite RCE fee (\$810.00). Applicant subsequently became aware that the December 24, 2008 office action was non-final and that no RCE was required. Applicant thus hereby requests, within the 2-year deadline, a refund of the aforementioned RCE fee pursuant 37 CFR 1.26(b). In order to satisfy the requirements of the request, Applicant hereby asserts the following:

**I. Fee was paid in error.**

The December 24, 2008 office action was non-final and that no RCE was required when Applicant's response was filed March 24, 2009. As evidence of this, Applicant has attached as Exhibit A a Notice of Improper Request for Continued Examination indicating that 37 C.F.R. 1.114 does not permit filing of an RCE in the circumstances under which the previous response and RCE were filed.

**II. Refund Request.**

Applicant paid the RCE fee of \$810.00 and respectfully requests a refund of the full amount.

**III. Manner of Refund.**

The Commissioner is requested to refund the RCE fee (\$810.00) to the credit card account from which payment was made in accordance with 37 C.F.R. § 1.26. In the alternative, Applicant requests a refund of \$810.00 be refunded to **deposit account 23-3178**.

In the event of any questions, or additional documentation is required in this matter, please contact the attorney below.

Dated this 7<sup>th</sup> day of April 7, 2009.

Respectfully submitted,

**R. Burns Israelsen/ Reg. No. 42685**

R. BURNS ISRAELSEN  
Attorney for Applicant  
Registration No. 42,685  
Customer No. 022913  
Telephone No. (801) 533-9800

**Exhibit A**  
**Notice of Improper Request for Continued Examination**



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
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22913 e 03/30/2009

Workman Nydegger  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111

## DOCKETED

Atty MAS File #           
By JKP On 4-2-09  
Action           
Response Due         

**Paper No.**

Application No.:	10/761,574	Date Mailed:	03/30/2009
			
First Named Inventor:	Pai, Nien-Hua,	Examiner:	SAFAIPOUR, HOUSHANG
Attorney Docket No.:	17657.47a	Art Unit:	2625
Confirmation No.:	3462	Filing Date:	01/21/2004

**Please find attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

**NOTICE OF IMPROPER REQUEST FOR  
CONTINUED EXAMINATION (RCE)**

Application No.  
10/761,574

Applicant(s)  
PAI, NIEN-HUA

Art Unit  
2600

Date Mailed:

The request for continued examination (RCE) under 37 CFR 1.114 filed on 24 March, 2009 is improper for reason(s) indicated below:

1. ☐ Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
2. ☐ Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
3. ☒ Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
4. ☐ The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
5. ☐ The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
6. ☐ The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
7. ☐ The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this Notice MUST be returned with the reply.***

Direct any questions concerning this notice to

/KATRINA HARLING/, Technology Center 2600

Telephone Number: (571)272-7254